

SUBJECT: LOBBYING COST REFORM

1. Purpose: To revise policies and procedures regarding Lobbying Cost Reform.
2. Effective Date: Upon issuance.
3. References:
 - A. 31 U.S.C. 1352, Public Law 101-121, Section 319.
 - B. Federal Register publication, December 20, 1989, Vol. 54, No. 243.
 - C. Federal Register publication, February 26, 1990, Vol. 55, No. 38.
 - D. Mournighan memo, dated April 17, 1990.
 - E. Civilian Agency Acquisition Council (CAAC) Letter No. 90-04, dated April 4, 1990.
 - F. Federal Register publication, January 19, 1996, Vol. 61, No. 13
4. Supersedes: Policy and Procedure 03.8A dated February 26, 1993.
5. Applicability: Federal contracts, grants, cooperative agreements, and M&O contracts exceeding \$100,000, and Federal loans and commitments providing for the U.S. to insure or guarantee a loan exceeding \$150,000 executed after December 22, 1989.
6. Background: Public Law 101-121, Section 319, generally prohibits recipients of Federal contracts, grants, cooperative agreements, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, or loan. It requires that each person* who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, must disclose lobbying with nonappropriated funds (includes profits from any covered Federal action). Reference E and Enclosure 1 thereto (Reference F) clarifies that the lobbying restrictions for existing acquisition and assistance actions apply only to new scope modifications or renewals of more than \$100,000.00.

The law also requires recipients and their subtiers certify their compliance with the law and file disclosure reports on lobbyist activities when nonappropriated funds or profits are used.

*"Person" means an individual, corporation, company, association, authority, firm, partnership, society, subcontractors/subgrantees (at any tier), State and local government, regardless of whether such entity is operated for profit or not-for-profit.

7. Policy: The Disclosure Forms shall be forwarded for completion for each new, renewal, and new scope modification to existing award in excess of \$100,000. The filing of this form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered Federal action.

Certifications, and Disclosure Forms, if required, will be obtained for each award in excess of \$100,000 (acquisition and assistance) and each commitment (insured or guaranteed loan in excess of \$150,000) made after December 22, 1989. Solicitations in excess of \$100,000 for which proposals have not been received will be amended, where practicable, to include the proper certificate and, for acquisition actions, the solicitation clause at FAR 52.203-11. When not practicable to amend a solicitation, and in those cases where bids have been opened or offers received, prior to December 23, 1989, the awardee must submit the required Certification and Disclosure Form, if required, and accept the clause, for acquisition actions, at FAR 52.203-12, prior to award. The original Certification and any Disclosure Statement shall be maintained in the official Contracts file, and a copy of the Disclosure Statement shall be sent to the ACQ Policy Team.

8. Procedure:

A. Acquisitions and Assistance (Prime Awards)

(1) Contracts

- (a) New Awards: The Certification (included as a part of the representations and certifications package or at FAR 52.203-11) and Disclosure Form (Standard Form (SF) LLL), if required, shall be obtained for all new awards in excess of \$100,000 (appropriated funds), if not previously included in a solicitation package. In addition to the "Certification", and the Disclosure Form, the contract clause, at FAR 52.203-12, shall be included in the award. The clause is now contained in both the CRDC and CRDNP sets of General Provisions.
- (b) Existing Awards: The contract clause shall be added and the Certification and the Disclosure Form, if required, obtained for any new scope modification or renewal awards for additional appropriated funds in excess of \$100,000.
- (c) Subawards: The Certification and the Disclosure Form, if required, shall be obtained from any person who requests or receives any new scope or renewal subcontracts exceeding \$100,000 after December 22, 1989. In addition, the contract clause at FAR 52.203-12 shall be included in the award (See Section 8.C. of this P&P for further details).
- (d) Solicitations: Solicitations issued after December 22, 1989, shall contain the Certification, Disclosure Form, and the contract clause as part of any solicitation package. The award of a contract in excess of \$100,000 resulting from a solicitation issued prior to December 23, 1989 shall contain the contract clause, and the Certification and Disclosure Form obtained if requirements were not in any solicitation package. Section K of the solicitation shall contain the attached

Certification and Disclosure Form. The General Provisions, Section I, of the solicitation shall contain the contract clause.

(2) Financial Assistance:

- (a) New Awards: The Certification (FA-Certs) and Disclosure Form (SF LLL), if required, shall be obtained for all new awards exceeding \$100,000 (appropriated funds) if not previously included in any solicitation package.
- (b) Existing Awards: For renewal actions awarded before December 23, 1989, where the project period exceeded \$100,000 and a certification has not been obtained, the Certification and Disclosure Form, if required, shall be obtained prior to the continuation award (even if the continuation action is \$100,000 or less). For others, the "Certification" and Disclosure Form, if required, shall be obtained with renewal applications and prior to new scope continuation awards exceeding \$100,000.
- (c) Subawards: The Certification and the Disclosure Form, if required, shall be obtained from any person who requests or receives any new scope or renewal subcontracts exceeding \$100,000 after December 22, 1989. (See Section 8.C. of this P&P for further details).
- (d) Solicitations: Each DOE solicitation involving a new Federal commitment in excess of \$100,000 shall provide a full text copy of the certification requirement and Disclosure Form.

(3) Loans:

- (a) New Awards: The Certification (located at FAR 52.203-11) and Disclosure Form (SF LLL), if required, shall be obtained for all new awards or commitment in excess of \$150,000 (appropriated funds). In addition to the "Certification" and the Disclosure Form, the required clause, at FAR 52.203-12, is available in the Acquisition & Assistance Group's form bins and in the computer system, respectively.
- (b) Existing Awards: The clause shall be added and the Certification and Disclosure Form, if required, shall be obtained for new scope or renewal awards of additional appropriated funds in excess of \$150,000.

(4) M&O Contractors:

- (a) Prime Contract. The Certification (located at FAR 52.203-11) and Disclosure Form (SF LLL), if applicable, should be obtained from the M&O and the contract clause should be included in the M&O contract as soon as possible, but in no event later than the next major modification or annual funding action after December 22, 1989.
- (b) New Subawards/Renewals: The Certification and Disclosure Form, if required, shall be obtained for all new awards and new scope or renewal awards in excess of \$100,000 (appropriated funds), if not previously included in the solicitation. In

addition to the Certification and the Disclosure Form, the contract clause, at FAR 52.203-12, shall be included in the award.

- (c) Existing Subawards: Whether or not the clause has been made a part of the contract, the Certification and the Disclosure Form, if required, shall be obtained from any person who requests or receives any new scope or renewal subcontracts exceeding \$100,000 after December 22, 1989.
- (d) Solicitations: Solicitations issued after December 22, 1989, shall contain the Certification, Disclosure Form, and contract clause as part of the solicitation package.

B. Disclosure Forms (SF LLL) for Acquisition, Assistance, and M&O Contractors Awards:

- (1) Each person who requests or receives from an agency a Federal contract, grant, cooperative agreement, or loan shall file with that agency a Disclosure Form if such person has made or has agreed to make any payment using nonappropriated funds which would be prohibited if paid for with appropriated funds. The Disclosure Form should be forwarded with the Certification.
- (2) Each person shall file a Disclosure Form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under 8.A.(1)(a)-(c) or 8.A.(2)(a)-(c) of this policy. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered action.

C. Acquisition, Assistance, and M&O Contractors (Subawards):

- (1) A Certification and a Disclosure Form, if required, shall be obtained from any person who requests or received from a prime:
 - (a) A new scope or renewal subcontract exceeding \$100,000 at any tier under a Federal contract;
 - (b) A new scope or renewal subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
 - (c) A new scope or renewal contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

- (d) A new scope or renewal contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement.
- (2) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Prime. The prime shall forward all Disclosure Forms to the Contracting Officer, who shall forward a copy to the ACQ Policy Team. The original shall be maintained in the contract file.

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